In the High Court of Judicature at Madras

Dated:01.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice S. MANIKUMAR

Writ Petition No.32396 of 2003

A.V.S.Raja .. Petitioner

vs.

1. Indian Bank
   Anna Nagar Branch
   W/100, 2nd Avenue
   Chennai 40.

2. The Registrar
   Debt Recovery Appellate Tribunal
   Chennai.

3. The Registrar
   Debt Recovery Tribunal II
   Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari as stated therein.

For petitioner : Mr.AR.L.Sundaresan,Sr.Counsel
for Mrs.AL.Gandhimathi

For respondents : Mr.Sampathkumar,Sr. Counsel
for Mr.V.Paul Das for R.1

ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner challenges the order dated 01.08.2003 made in R.A.No.2 of 2003 on the file of Debt Recovery Appellate Tribunal, Chennai arising out of the order in O.A.No.27 of 2001 dated 19.06.2002 on the file of Debt Recovery Tribunal II, Chennai.

2. Heard the learned senior counsel for the petitioner as well as the contesting first respondent.

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3. In view of the limited issue raised, we are of the view that it is unnecessary to go into all the factual matrix as stated by the petitioner as well as the first respondent. It was contended before the Debt Recovery Appellate Tribunal that though the loan availed by the petitioner was an agricultural loan at concessional rate of interest, however, the respondent Bank charged interest at 19.89%, which is not applicable to agricultural loan. Taking note of various aspects including the admitted factual position that the loan availed by the petitioner was not utilised for agricultural purpose, but it was diverted to commercial business, the Tribunal reduced the interest to 10% instead of 19.89% only for pendente lite and post-decree periods. Not satisfied with the said order, the petitioner has filed the present writ petition.

4. The learned senior counsel appearing for the petitioner by drawing our attention to the fact that since the petitioner had repaid substantial amount towards loan amount, viz., Rs.18 lakhs and in view of the fact that the sanctioned amount could not be used for agricultural purpose due to various reasons, including the legal objection, the Appellate Tribunal ought to have reduced the interest considerably instead of reducing it to 10%. According to him, even interest at 10% is a heavy burden on the petitioner. On the other hand, learned senior counsel appearing for the contesting first respondent Bank, by drawing our attention to the admitted factual position as evident from the fax message dated 14.03.2001 contended that having received huge amount by way of loan for the purpose of agricultural development, inasmuch as the petitioner invested the said money in capital market, the petitioner is not entitled to any concession in the rate of interest. He further pointed out that even the Appellate Tribunal, in spite of these aspects, has reduced the interest rate to 10% and hence, no further reduction is warranted.

5. We considered the rival contentions.

6. The Appellate Tribunal, mainly relied on the fax message dated 14.03.2001, available at para 3 of its order, which amply shows that on receipt of loan amount from the Bank for the agricultural purpose, the petitioner diverted the same and invested the entire money in the capital market. No doubt, the petitioner has stated that he had invested the money in the capital market through the Port-folio Management believing the words of one H. Srinivasan, share broker and that due to the volatility in the market, the entire money was lost just in a period of six months. The above information makes it clear that though loan was advanced only for agricultural purpose, the same was diverted for commercial purpose. In such event, the petitioner cannot claim that he is only liable to pay the rate of interest specified for agricultural loans.

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7. The learned senior counsel for the petitioner by relying on the decision of the Apex Court in the case of Central Bank of India vs. Ravindra & Others reported in 2001 (7) Supreme 764 contended that the Debt Recovery Appellate Tribunal has ample powers to reduce the interest or in certain cases to award no interest. There is no dispute regarding the power of the Appellate Tribunal with regard to waiver of interest, however, it depends upon various factors and the conduct and bona fide efforts of the person, who borrowed loan from the financial institution. We have already referred to the factual conclusion arrived at by the Appellate Tribunal. Inasmuch as the petitioner had diverted the funds for commercial purpose, the Tribunal cannot be expected to reduce the rate of interest as claimed by the petitioner. For the same reasons, we are unable to accept the contention of the learned counsel for the petitioner. In fact, taking note of various aspects such as, repayment of money, etc., the Appellate Tribunal has reduced the rate of interest to 10% from 19.89% and we find no adequate reason to reduce the rate of interest further, as claimed by the learned senior counsel for the petitioner. On the other hand, we are in agreement with the conclusion arrived at by the Appellate Tribunal. Consequently, the writ petition fails and the same is dismissed. No costs.

kh

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1. Indian Bank, Anna Nagar Branch
   W/100, 2nd Avenue, Chennai 40.

2. The Registrar, Debt Recovery Appellate Tribunal, Chennai.

3. The Registrar, Debt Recovery Tribunal II, Chennai.

+ one cc to Mr.AR.M.Arunachalam, Sr.No.39822.
+ one cc to Mr.Sampath Kumar, Advocate Sr.No.40089.

HPR (CO)
RSM/19.9.2006

W.P.No.32396 of 2003

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